**Domestic Abuse & Order for Protection**

***The Law***

**WHAT IS DOMESTIC ABUSE?**

Domestic abuse is defined as physical harm, bodily injury, assault, or criminal sexual conduct, or the infliction of fear of imminent physical harm, bodily injury or assault between family and household members. Domestic violence offenses include neglect, assault, criminal sexual conduct, and murder/homicide. Domestic abuse usually becomes more frequent and severe over time.

**WHAT SHOULD YOU DO IF YOU HAVE BEEN ABUSED?**

You should seek medical attention as soon as possible. Tell the medical staff what happened. In addition, you should make a police report regardless of whether or not you want the abuser to be arrested. The report documents the abuse and can be used as evidence in court proceedings at a later date. You should also save all reports and document everything.

**WHAT KIND OF LEGAL HELP CAN A VICTIM OF ABUSE RECEIVE?**

You may receive an order for protection or pursue criminal charges against the abuser. In order to do this a crime must have been committed and documented. This means that a police report must be completed.

**WHAT IS AN ORDER FOR PROTECTION?**

An Order for Protection (OFP) is a court order to stop domestic abuse. Domestic abuse is harming you physically or threatening to harm you. It also includes forcing you to have sex. You can also get an OFP on behalf of a child in your family or household. The OFP tells the abuser to stay away from the victim and the victim's home. It can also order the abuser to move out of the home. An OFP is granted in family court in the county where you reside or the abuse occurred.

**WHO CAN GET AN ORDER FOR PROTECTION**?

The following people can request an order for protection:

1. Spouses and ex-spouses
2. Parents and children
3. Person related by blood (legally adopted individuals are also included)
4. Persons who live or have lived together.
5. Persons who have a child in common.
6. Persons involved in a significant romantic or sexual relationship.
7. Father or mother of an unborn child, married or not, living together or not.

**WHAT CAN I ASK THE COURT TO DO?**

You can ask the court to do the following:

1. Order the abuser not to harm or threaten you, the children or anyone in your home.
2. Exclude the abuser from your home, and a reasonable area near your home and work place, child-care and school.
3. Award you temporary custody of the children and establish visitation.
4. Order counseling or treatment for one or both of you.
5. Order a determination regarding possessions.
6. Order the payment of medical bills, insurance, child support, maintenance and/or restitution.

**HOW DO I GET AN ORDER FOR PROTECTION?**

If you want to get an OFP, you must follow these steps.

1. Go to the domestic abuse office at the courthouse
2. You must file a petition telling the court what you want done, the name of the perpetrator and the name of the victim.
3. An affidavit must also be attached explaining the facts and circumstances that have caused you to want an OFP.
4. If you need immediate protection from danger, you may ask for an Ex Parte Order. This is an order that is signed the same day you apply. It can be granted before the abuser knows about the action and it gives you protection until there is a hearing.
5. A hearing will be set within 14 days after filing your petition. It must be held within 7 days if you have an Ex Parte Order.
6. You must show up for the hearing or the order will be dismissed. You will be asked to tell the judge what happened and you should bring any evidence that will support your case. The abuser will also tell the court his or her side of the story. The abuser may have also filed a petition against you. If this is the case the judge may order a Mutual Order for Protection. This is an order against both of you.
7. If the judge finds that the victim has a need for an OFP, then it will be issued at the time of the hearing. The order will describe your rights, and how long the order will last.

**WHAT HAPPENS IF THE ABUSER VIOLATES THE OFP?**

If the abuser violates the OFP, call the police. The police can arrest the perpetrator, but they must see the order.

**Domestic Abuse & Order for Protection**

***Questions***

1. What is domestic abuse?

2. What is domestic violence?

3. What is an order for protection?

4. Who can get an order of protection?

5. What things can you ask for in your order for protection?

6. Explain the procedure you must follow in getting an order for protection.

7. What is an affidavit?

8. What is an ex parte order and when would this be issued?

9. What is a mutual order for protection and when would that be issued?

10. What can you do if an OFP doesn’t work and the abuser comes to your house?

**Domestic Abuse and Order for Protection**

***Activity: Case Study***

Your sister Dana and her 1-year-old daughter are living with your sister’s boyfriend. He works, while Dana goes to school. When he comes home at night, he immediately starts drinking. He says it is to relax. The more he drinks the more verbally abusive he becomes. He complains about the house, Dana’s cooking, how much the baby cries, etc. He has hit Dana in the past, but has always promised not to do it again. Last night started out the same only this time he snapped when the baby wouldn't stop crying. He started throwing things at Dana and eventually hit her several times in the mouth. The baby was in the room at the time and was hit by a magazine, but was not hurt. Things continued to escalate, until Dana grabbed the baby and ran out of the house. She called the police from a neighbor’s house. He continued to yell and threaten her. When the police arrived they took him away and suggested that Dana get an order for protection. Dana is scared. She has decided to get an order for protection.

Dana has come to you for help and support. Briefly describe for her the procedure she will have to follow to get an order of protection. Also list the things you think should be included in the order of protection.

**Domestic Abuse & Order for Protection**

***Activity: Mock Trial:***

**Domestic Abuse Mock Trial**

**District Court**

***Julie Stone,*** )

Plaintiff, )

v. )

)

***John Burton,*** )

Defendent. )

### FACTS

Julie and John have been going out together for three months. Julie is 27 and lives with her mom and brother about three blocks from John’s home. John is 29 years old and lives alone. Neither is married. John and Julie had dated frequently while they were in high school but they had not seen each other for nearly ten years until they started going out again recently. While they were in high school, they had a stormy relationship. They never actually hit each other but there were many loud arguments. During these arguments, Julie became very agitated and John tended to raise his voice and often used bad language. Once, he threw a plate at Julie in the school cafeteria and he was disciplined by the school for the incident. The bad feelings never last long, however.

During the past six weeks, John has mentioned the possibility of them becoming engaged. Julie has been non‑committal and John has let the subject drop after he mentions it. Julie knows that her brother dislikes John and has always urged her not to see him. The couple have had some arguments over little things though these arguments have not been as intense as when they were in school together.

On February 6, John arrived at Julie’s home around 5:30 p.m. They were going to a 7:00 p.m. movie and John was early. Julie’s brother, Max, answered the door and told John that Julie was not ready. They started talking and a few minutes later Julie came downstairs when she heard raised voices. John saw Julie and tried to push past Max who banged the front door on John’s foot. John yelled that this was not going to happen to him again. Julie grabbed at her brother but when John raised his arm she ducked and fell, hurting her ankle. Max then got the door closed and, from outside, John called out that he would be back. However, he did not return that evening and the next day Julie sought an Order for Protection against him.

**ISSUE:** Should the court issue an Order for Protection against John?

|  |  |
| --- | --- |
| **Plaintiff Witnesses** | **Defense Witnesses** |
| Julie Stone, Plaintiff | John Burton, Defendant |
| Max Stone, brother | Eliza Little, the Stone’s neighbor |

**Plaintiff Witness Statements**

**Julie Stone**

I am seeking protection from John because I don’t know what he is capable of doing. We argued a lot when we knew each other before but I really liked him and we enjoyed being together most of the time. I lost track of John after we graduated but we met again recently and started going out. I was interested to see how much he had changed. He is quieter now but we still argue a bit. My mom and brother never liked John, though, and thought I shouldn’t start dating him again. John has talked about getting engaged but I am not sure I want to.

On February 6, John came to my house because we were going out to a movie. I came downstairs when I heard shouting and I saw John trying to get past my brother. John was angry and I grabbed for my brother’s arm to get him away from John. When I saw John’s arm go up, I thought he was going to throw something so I ducked and ran away. I am not sure what John is capable of doing to people and he scares me when he gets angry. Now I just want him to stay away.

**Max Stone**

I have never really liked John and my mom and I were not happy when Julie started seeing him again. When Julie was in school, I told her over and over again that she should stop seeing him. On February 6, John came to the house early and he became abusive when I suggested he come back in a little while. I might have started yelling at him too. When he started to come in, I tried to close the door. He shouted something at Julie and I thought he was going to hit me. I managed to get the door closed but he continued to shout abuse from outside.

I believe John has been violent with my sister in the past and now I can see he is still capable of hurting her.

**Defendant’s Witness Statements**

**John Burton**

Julie and I used to date each other in high school and even though we lost touch after we graduated I always hoped we could get back together someday. I was so pleased when Julie agreed to start seeing me again recently. I would like to get engaged but she always changes the subject when I mention it. We argue sometimes but everybody does. I know I have a temper but I try to keep it in check and I have never hurt Julie and I never would.

I was a little early when I went to her place on February 6 but I figured we could talk or watch television before we went out. Julie’s brother Max answered the door. I know he does not like me so I tried to be polite. It didn't work because he yelled at me to leave and come back later. I had to talk louder to make myself heard. When I saw Julie I tried to get to her to explain but the door banged on my foot. I cried out and almost lost my balance. Max slammed the door. I was really mad and yelled out that I would come back later. I didn’t though because I thought it would be better to let things cool down.

**Eliza Little**

I live next door to the Stone family and know them very well. I also know John Burton because he and Julie have stopped by my house one or twice and had coffee with me. John has also helped me move some heavy things in the garden. I have never seen John and Julie fight.

I was starting my walk on February 6 when I saw John arrive. Max opened the door and was very curt with John. I heard him tell John to go away. John yelled back at him and then I saw John’s arm go up; then John almost fell backwards as the door was shutting and I think he dropped his car keys. John hung around for a few minutes and I heard him shout out that he would be back. I don’t think it was a threat. While all this was happening, I was about 15 yards away.

**The Law**

***“Domestic abuse”*** means the following if it is committed against a family or household member by a family or household member:

1. physical harm, bodily injury or assault; or
2. the infliction of fear of imminent physical harm, bodily injury, or assault.

***“Family or household members”*** means:

1. spouses or former spouses;
2. parents and children;
3. persons related by blood;
4. persons who are presently residing together or who have resided together in the past;
5. persons who have a child in common regardless or whether they have been married or have lived together at any time;
6. a man and a woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and
7. persons involved in a significant romantic or sexual relationship.